IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 291 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AMBICA METAL BOX INDUSTRIES PVT.LTD.

Appearance:
MR AKIL QURESHI FOR MR MANISH R BHATT for Petitioner
MR MJ SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 21/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, at the instance of the

revenue, the following question is referred to us in respect of assessment year 1976-77 :-

"Whether, the assessee on the facts and in the circumstances of the case is entitled in law to claim initial depreciation under section 32(1)(vi) of the Income-tax Act, 1961 ?"

2. At the hearing of the reference, Mr Qureshi, learned counsel for the revenue and Mr Shah, learned counsel for the respondent-assessee fairly state that the question is already covered by the decision of this Court in CIT vs. J.H. Kharawala, (1994) 208 ITR 691 wherein this Court has laid down that for claiming the benefit under Section 32(1)(vi), mere registration is not sufficient and that the unit must fall within the definition of a small scale industry as given in the provisions of the Income-tax Act meaning thereby the value of the plant and machinery of the unit does not exceed Rs.7,50,000/- at the relevant time.

3. In view of the aforesaid principle laid down by this Court, we answer the question in the affirmative i.e. in favour of the revenue and against the assessee.

4. The reference accordingly stands disposed of with no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-